Supreme Court, U.S.
FILED
98 587 OCT 7 1998

(1)

No.

In The

Supreme Court of the United States

October Term, 1998

RAYMOND WOOD,

Petitioner,

vs.

EDWARD G. RENDELL, Mayor of the City of Philadelphia, *et al.*,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

ROSALIND M. PLUMMER, ESQ.
Counsel of Record
500 East Washington Lane
Philadelphia, PA 19144-1011
(215) 438-3178

Attorney for Petitioner

148688

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

67 pp

QUESTION PRESENTED

The federal question for which review is sought is; whether a litigant is entitled to a new trial in a 42 U.S.C. § 1981 race discrimination action between parties of the same race, when his right to due process and basic fairness is violated because the trial judge refused a specific voir dire question regarding a commonly held opinion relevant to an essential element of the case, that would reveal a disqualifying state of mind and absolutely preclude the litigant from the possibility of recovery if held by a single juror.

PARTIES TO THE PROCEEDING

Petitioner, Raymond Wood, who was the plaintiff in the case below, and the following defendants entered their appearance and were parties before the court of appeals; John F. Street, City of Philadelphia, Henry G. Cisneros, The United States Department of Housing and Urban Development, Steven F. Kauffman and Community Ventures, Inc.

In addition to the above parties whose appearance was entered before the court of appeals, the following parties were also named in the original complaint at the district court level; Edward G. Rendell, Mayor, The City of Philadelphia, Augusta Clarke, Una Vee Bruce, Francisville Community Development Corporation, Concerned Citizens of Francisville, John F. Kromer, Barbara Kaplan.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Cited Authorities	v
Opinions Below	1
Statement of Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	4
Procedural and Factual Background	4
Reasons for Granting the Writ	14
I. The Petition Should Be Granted Because The Opinion Below Conflicts With The Applicable Prior Rulings Of This Court Regarding The Constitutional Due Process And Basic Fairness Limitations On The Broad Discretion Accorded To The Trial Judge In The Conduct Of Voir Dire Under Rule 47(a) Of The Federal Rules Of Civil Procedure.	14

Contents

Page

II. The Petition Should Be Granted Because The Opinion Below Conflicts With Applicable Prior Rulings Of This Court On The Essential Due Process Right Of A Litigant To A Trial Before A Fair And Impartial Trier Of Fact. 17

III. The Petition Should Be Granted Because The Opinion Below Effectively Nullifies The Legal Protections Accorded Petitioner And Other Similar Litigants Under 42 U.S.C. § 1981, Where The Opposing Parties Share The Same Race Or Gender. 18

Conclusion 19

TABLE OF CITED AUTHORITIES

Page

Cases:

Aldridge v. United States, 283 U.S. 308 (1931) 9, 14, 16

Commonwealth v. Christian, 480 Pa. 131, 389 A.2d 545 (1978) 9

Edmonson v. Leesville Concrete Co., Inc., 500 U.S. 614 (1991) 9, 16, 20

Ham v. South Carolina, 409 U.S. 524 (1972) 16

In re Murchison, 349 U.S. 133 (1955) 14

Kiernan v. Van Schaik, 347 F.2d 775 (3d Cir. 1965) .. 9

Morgan v. Illinois, 504 U.S. 719 (1992) ..9, 14, 15, 16, 17, 20

Swain v. Alabama, 380 U.S. 202, 85 S.Ct. 824 (1965) 15

Turner v. Louisiana, 379 U.S. 466 (1965) 16

United States v. Napoleone, 349 F.2d 350 (3d Cir. 1965) 9, 17

Statutes:

28 U.S.C., § 1254(1) 1

28 U.S.C. § 1343(a)(3) 4

Table of Cited Authorities

	Page
28 U.S.C. § 1343(a)(4)	4
28 U.S.C., § 1391	4
42 U.S.C. § 1981	i, 2, 4, 6, 10, 13, 15, 17, 18, 19
42 U.S.C. § 1983	4
42 U.S.C. § 1985	4
42 U.S.C. § 2000(d)	4
United States Constitution:	
Fourteenth Amendment	2, 16
Rules:	
Federal Rule of Civil Procedure 47(a)	3, 14
Supreme Court Rule 10.1(c)	1
Other Authoritity:	
Pub. L. 102-166, Title I, section 101, Nov. 21, 1991, Stat. 1071	2

APPENDIX

	Page
Appendix A — Judgment Of The United States Court Of Appeals For The Third Circuit, Dated May 6, 1998	1a
Appendix B — Memorandum Opinion Of The United States Court Of Appeals For The Third Circuit, Filed May 6, 1998	3a
Appendix C — Order Of The United States District Court For The Eastern District Of Pennsylvania, Dated February 26, 1997 And Entered March 5, 1997	7a
Appendix D — Memorandum Of The United States District Court For The Eastern District Of Pennsylvania, Filed March 5, 1997	8a
Appendix E — Civil Judgment Of The United States District Court For The Eastern District Of Pennsylvania, Filed June 20, 1996	26a
Appendix F — Order Of The United States Court Of Appeals For The Third Circuit Sur Petition For Rehearing, Dated June 9, 1998	27a
Appendix G — Plaintiff's Proposed Voir Dire Questions To The United States District Court For The Eastern District Of Pennsylvania	30a
Appendix H — Jury Verdict Form	35a

OPINIONS BELOW

The memorandum opinion of the United States Court of Appeals for the Third Circuit in *Raymond Wood v. Edward G. Rendell, etc., et al.*, Civ. No. 97-1270, is not published and the record has not yet been released. (App. B, p. 3a; 4a-5a). The memorandum opinion of the district court in *Raymond Wood v. Edward G. Rendell, et al.*, Civ. No. 94-1489, is not yet reported. (App. D, p. 8a).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit ("Court of Appeals") was entered on May 6, 1998. (App. A, p. 1a). The Court of Appeals denied a timely petition for rehearing on June 9, 1998. (App. F, p. 27a).

On September 4, 1998, this Honorable Court, under the signature of The Honorable Justice Souter, granted petitioner's request for an extension of time until October 8, 1998, to file a Petition for Writ of Certiorari.

Jurisdiction in this Honorable Court is invoked pursuant to 28 U.S.C., § 1254(1).

Pursuant to U.S. Sup. Ct. Rule 10.1(c), this petition arises from an opinion of the Court of Appeals on a federal question which conflicts with applicable decisions of this Honorable Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section One of the Fourteenth Amendment to the United States Constitution provides:

> Amendment 14 — Section I — All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1981, The Civil Rights Act of 1964, as amended by The Civil Rights Act of 1991, Pub. L. 102-166, Title I, section 101, Nov. 21, 1991, Stat. 1071, provides:

> Section 1981 Equal rights under law
>
> (a) Statement of equal rights
>
> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) Definition

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by his section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Federal Rule of Civil Procedure 47(a) provides:

Rule 47. Selection of Jurors

(a) Examination of Jurors. The court may permit the parties or their attorneys to conduct the examination of perspective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

STATEMENT OF THE CASE

Petitioner, Raymond Wood, ("Mr. Wood"), respectfully requests that this Honorable Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

The fundamental federal question in this case is; whether a civil litigant is entitled to a new trial when his right to due process and basic fairness is violated because the trial judge refused a voir dire question regarding a commonly held belief relevant to an essential element of the case that would reveal a disqualifying state of mind, under circumstances where the belief is invoked as a defense throughout pretrial and trial proceedings and the litigant is precluded from the possibility of recovery if the belief is held by a single juror.

To fully appreciate the issues presented in this case, a brief review of the procedural and factual history is essential.

Procedural and Factual Background:

Petitioner, Raymond Wood ("Mr. Wood"), who is black and the descendant of former United States slaves, is a private businessman, entrepreneur and for profit community developer. Mr. Wood initiated this action in the United States District Court for the Eastern District of Pennsylvania, alleging multiple violations of his rights by the named municipal, federal and private defendants under the Civil Rights Statutes, 42 U.S.C., §§ 1981, 1983, 1985 and 2000(d). Federal question jurisdiction was invoked under 28 U.S.C., §§ 1343(a)(3) and (4) and venue was proper in the eastern district under 28 U.S.C., § 1391.

The individual defendant, Una Vee Bruce ("Ms. Bruce"), who is also black, headed Concerned Citizens of Francisville

("the NAC") and Francisville Community Development Corporation ("the CDC"). The NAC and the CDC were politically selected, designated and funded by the City of Philadelphia from among various community organizations seeking that status.

The individual defendant John F. Street ("Councilman Street"), who is also black, was district councilman for the Francisville community and also wielded influence as City Council President.

In relevant part, Mr. Wood alleged in the case below that he had, over the course of several years, invested significant private monies in the Francisville community in connection with his development of a privately owned, historically certified, commercial property, over which he had ownership and site control, located on Francisville's commercial corridor.

Mr. Wood alleged that he was denied notice of and participation and inclusion in a federally funded, City administered and implemented, five year community development plan for which the defendants were by contract and tradition required to notify, solicit and include interested developers and property owners, including Mr. Wood.

Mr. Wood alleged that the Francisville plan and the political maneuvering associated with its implementation were intentionally designed by defendants Councilman Street and Ms. Bruce to undermine and destroy his prior commercial development. He maintained that the other named City and private defendants acquiesced to and assisted Councilman Street and Ms. Bruce in their actions, with knowledge of the harmful, discriminatory objective with regard to Mr. Wood.

Mr. Wood further maintained that defendants Councilman

Street and Ms. Bruce were motivated by improper racial considerations, including prior threats by Councilman Street to destroy Mr. Wood's private development if Mr. Wood didn't relinquish it to Councilman Street to use as a political favor for a white developer. Mr. Wood maintained that Councilman Street and Ms. Bruce were also motivated by their desire to constrain private, economic development activity by blacks in Francisville in order to maintain financial and political dependency on Councilman Street and Ms. Bruce by residents of the predominantly black, low income Francisville community, as distinguishable from white entrepreneurs and communities within Councilman Street's district.

After a partial grant of summary judgment by the district court, the case below went to jury trial only on Mr. Wood's race discrimination claim under 42 U.S.C. § 1981 against Councilman Street and Ms. Bruce. The remaining claims allowed against the municipal and corporate defendants were derivative, based solely upon a finding of liability against the two black defendants.

Prospective jurors come into court with all the opinions and attitudes they develop and carry in life and are then encouraged to apply their own common sense and to view likelihoods and probabilities as they see them, in arriving at judgments and determinations. Some attitudes and views are strongly held and some are clearly prejudicial to a party's case. Voir dire is the only mechanism available for a party to weed out prejudicial attitudes and opinions and to arrive at a semblance of a fair trial and an objective panel.

Mr. Wood was well aware of the commonly held opinion that one black person cannot or will not discriminate against another black person on the basis of race. So was the trial judge. Councilman Street and Ms. Bruce had in fact made legal

arguments in their pretrial filings requesting dismissal of the discrimination case on the basis of the fact that both the plaintiff and the remaining defendants were black. Later, during openings, closing statements and the trial, Councilman Street and Ms. Bruce invoked this common opinion as a defense to Mr. Wood's claims of racially motivated discrimination:

Thompson — Opening:

> . . . The evidence instead will show that race played absolutely no part in the decision that was made. Counsel President John Street *is black.* His legislative aide who played a part here in terms of the groundwork with respect to the Community Ventures application *is black.* Vernon Marks who is the Chairman of the Vacant Property Review Committee *is black.* Una Vee Bruce who heads up the Francisville group who championed the building of housing *is black.* . . .

N.T. June 3, 1996 Vol. I, pp. 11-12 (emphasis added).

Washington — Opening:

> . . . I suggest in this instance, even though anything is possible, it is extremely unlikely that Ms. Bruce or the Francisville organization — and you will hear about the components of Francisville organization being primarily *a black African-American minority* organization working in an area that's *predominantly black African-American, minority area* — has in the past or in this instance intended to discriminate against anyone because of their color, their race.

N.T. June 3, 1996 Vol. II, p. 45 (emphasis added).

Washington — Opening:

> . . . That doesn't mean that everybody agreed all the time as the evidence will show they didn't, but discrimination because of race by Una Vee Bruce *against another African-American* is extremely unlikely, ...

N.T. June 3, 1996 Vol. II, pp. 48-49 (emphasis added).

Washington — Closing:

> . . . Now you do not have to divorce yourself from common sense and things that you learned that brought you to this point in time. *Mr. Wood is black or African-American. Ms. Bruce is black and African-American.*
>
> *From a starting point,* it seems to suggest that it would be unlikely that you would have such a motivation to discriminate just purely based on race.

N.T. June 18, 1996, p. 126 (emphasis added).

Consequently, in written pretrial submissions and hearings and again during the voir dire, which was conducted by the trial judge, Mr. Wood requested that a specific inquiry be directed to the veniremen regarding their opinion whether black on black racial discrimination was possible. (App. D, pp. 15a-16a; App G, p. 30a). The trial judge refused Mr. Wood's inquiry reasoning that his general questions regarding personal racial bias sufficiently covered the issue. (App. D, pp. 15a-16a).

The general questions on bias presented by the trial judge during the voir dire spoke only to the jurors' perception of their personal bias. However, Mr. Wood's inquiry was not concerned

with personal racial bias on the part of jurors. Rather, it sought to expose the presence of a common, stereotyped opinion and belief held by some individuals, both black and white, who themselves may otherwise be completely free of personal racial bias.

The opinion at issue is also so commonly held that a general question from the court regarding a juror's perception of his personal racial bias would not provoke a juror to call this view into question or to connect it to any sense of personal bias. A juror could in all candor believe the unexplored opinion to be correct and therefore not indicative of any personal prejudice or inability to be impartial on his part. *Morgan v. Illinois*, 504 U.S. 719, 727, 733ff (1992); *Aldridge v. United States*, 283 U.S. 308 (1931). *Also, Kiernan v. Van Schaik*, 347 F.2d 775, 779 (3d Cir. 1965); *United States v. Napoleone*, 349 F.2d 350 (3d Cir. 1965); *Commonwealth v. Christian*, 480 Pa. 131, 389 A.2d 545 (1978). *See Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991) (where the Supreme Court held that basic rules of fairness, due process and racial bias expressed in criminal cases applied to civil cases).

Neither Councilman Street nor Ms. Bruce were present in the courtroom during the *voir dire* to be observed by the veniremen, who were drawn from throughout the eastern district. Nor was the racial identity of Councilman Street and Ms. Bruce made known by the trial court during the *voir dire*.

The necessity for Mr. Wood's specific inquiry was made all the more clear during trial when Councilman Street and Ms. Bruce invoked this common opinion regarding the impossibility of same-race discrimination as a defense and to buttress the suggestion that their actions obviously had to be motivated by something other than race.

Further compounding the unfairness in the totality of this

case were the special interrogatories and a supplemental instruction given to the panel by the trial judge when the case was sent to the jury. In particular, by special interrogatory and supplemental instruction the trial court induced the jurors to make a preliminary, threshold and unanimous finding of racially discriminatory intent and motivation by the black defendants in their treatment of the black plaintiff as a "prerequisite" to exploring the other elements of the § 1981 claim. (App. D, pp. 10a-11a).

It was revealing that after about eighty minutes of deliberation the jurors came back to ask if they were free to move on to discuss the other elements of the Section 1981 claim without first being unanimous on the threshold interrogatory questions regarding the racial intent. (App. D, pp. 11a-12a). This indicated that the jury was split on the threshold issue of the racial intent of the black defendants with regard to the black plaintiff.

Mr. Wood requested that the jury be told simply that they were free to deliberate in any way and in any order they saw fit, so they could freely deliberate all the evidence and elements of the § 1981 claim before concerning themselves with filing out the interrogatories or assessing motivation. (App. D, pp. 11a-14a).

Over Mr. Wood's objection, the court gave the following supplemental instruction;

> The Court: Okay. *You must be unanimous in the determinations that you've been called upon to make by this jury verdict form.* Although the instructions and the manner in which the questions have been put forward are interrelated, for example, on question number 1, if you answer yes, then go on to question 2. *If you answer no to question 1, then you could continue on to question 4. So, I mean,*

there is some interrelationship in the format of the jury verdict form.

Beyond the jury verdict form which you've been given, I am not going to direct any particular format or process for your deliberations. I think your format and your process of deliberations must be your own style. *But, I do emphasize* that your answers to these questions, *or at least those questions which are necessary for you to answer as you proceed through your work, must be unanimous.* Now that's about as much as I can do for you.

There is a balance that I want to reach here. You have a jury verdict form which presents to you questions. *Those questions are interrelated in the sense that how you answer one question dictates whether or not you have to answer other questions. There is that interrelationship.*

Your answers have to be unanimous, but your method and your deliberative process I'm going to respect fully. I'm not going to intrude upon that in any way, shape or form. You do what you believe should be done with respect to that format and that order. *The jury verdict form is self-explanatory and you must be unanimous.*

Now, that's about as much as I think that I should say without — I don't want to run any risk of imposing on you your responsibility. My responsibility is Judge of the law. I mean, I've had many of the same format determinations to make for myself. Of course, I only had to worry about myself. There are

> eight of you functioning here. And, that just goes along with the deliberative process.
>
> *Consider what it is you have to address, make up your mind what the logical — or what logic requires you to do in order to perform your function and go forward on that basis, except questions that have to be answered have to be answered unanimously. Okay.*

NT. 6/19/96 p. 5 line 1 through p. 6 line 14. (Emphasis added.)

At approximately 11:40 AM, after the trial judge had given this supplemental instruction, the panel returned to the jury room. Less than 10 minutes later, the jury returned with answers indicating they were not unanimous on the threshold interrogatory question regarding the racial intent of the defendants. By virtue of their lack of unanimity on the threshold question(s) on the interrogatory form regarding racial intent, judgment on the interrogatory form was by instruction entered in favor of Councilman Street and Ms. Bruce and against Mr. Wood. (App. D, pp. 10a-11a; App. E, p. 26a; and App. H, p. 35a).

The jury's question and the timing of its subsequent action clearly indicate that at least one, but not all, of the jurors was unable or unwilling at threshold, without consideration of the other elements of the claim, to believe that the black defendants were motivated by racial discrimination in their conduct against the black plaintiff. This presented specific evidence of actual prejudice from the trial court's refusal to make the requested voir dire inquiry.

Mr. Wood's timely post-trial motion requesting a new trial, was denied by the district court. (App. C, p. 7a).

The trial court's refusal of the requested voir dire inquiry regarding the commonly held opinion that racially motivated discrimination between members of the same race is impossible, compounded by the form of the special interrogatories and the trial judge's supplemental instruction, prevented Mr. Wood from securing a fair trial before an impartial jury on his claims under 42 U.S.C. § 1981.

Even without consideration of the trial judge's special interrogatory and supplemental instruction, a *unanimous* finding by the jurors that the defendants were motivated by racial discrimination was essential to Mr. Wood's recovery against Councilman Street and Ms. Bruce. (App. D, p. 14a). Therefore, if even a single juror held this common opinion regarding black on black discrimination, then a unanimous verdict favorable to Mr. Wood would be an impossibility.

There is no statutory bar to Mr. Wood's right to relief under 42 U.S.C. § 1981 against the black defendants, Councilman Street and Ms. Bruce. However, as a practical matter the trial judge's refusal of the requested *voir dire* inquiry, under the circumstances of the case below, rendered recovery by Mr. Wood impossible and also nullified Mr. Wood's statutory entitlements under 42 U.S.C. § 1981.

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THE APPLICABLE PRIOR RULINGS OF THIS COURT REGARDING THE CONSTITUTIONAL DUE PROCESS AND BASIC FAIRNESS LIMITATIONS ON THE BROAD DISCRETION ACCORDED TO THE TRIAL JUDGE IN THE CONDUCT OF VOIR DIRE UNDER RULE 47(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Mr. Wood's petition for writ of certiorari should be granted because the Court of Appeals' opinion conflicts with applicable prior rulings of this Honorable Court regarding a litigant's fundamental due process right to a fair trial before a fair and impartial jury. *Morgan v. Illinois*, 504 U.S. 719, 727 (1992), *citing In re Murchison*, 349 U.S. 133, 136 (1955).

It is an established precept of this Court that "[a] fair trial in a fair tribunal is a basic requirement of due process." *Morgan, Id.*, at 727, quoting, *In re Murchison, Id.*, at 136. Even the broad discretion which this Court accords the trial judge under Rule 47(a) of the Federal Rules of Civil Procedure, over the form and scope of the voir dire inquiry, is subject to the demands of basic fairness and due process. *Morgan, Id.*, at 727, 733ff.

Consequently there must be sufficient inquiry as to the matters at issue in the case to establish the impartiality of the jury. In a situation like the case below, where the requested inquiry is directly relevant to an essential element of the litigant's case, a new trial is required where the court refuses any question that could be reasonably deemed to cover the issue and concern raised by the litigant's inquiry. *Aldridge v. United States*, 283 U.S. 308, 311 (1931).

In *Morgan, Id.*, this Honorable Court held that the trial court had erred in refusing inquiries about the views that prospective jurors held about capital punishment because the defendant's right not to be tried by a jury which would automatically impose the death penalty would be "nugatory and meaningless". This Court said that general questions were not sufficient because jurors could answer affirmatively to those questions without believing that those unexplored attitudes they held were either wrong or challengeable. *Morgan, Id.*, 504 U.S., at 733ff.

Mr. Wood maintains that he likewise had a constitutional right not to be tried before a jury which held a common stereotyped opinion and disqualifying state of mind concerning an essential element of his Section 1981 claim that would foreclose him from the possibility of recovery.

The trial judge in this case acknowledged that recovery on Mr. Wood's § 1981 claims required a ***unanimous*** finding of fact that the conduct by the defendants was motivated by race discrimination. (App. D, p. 14a). As a matter of law any juror having a preset opinion regarding the impossibility of black-on-black or same-race discrimination would have a disqualifying state of mind, particularly given the requirement for unanimity on the question of the racial motivation.

Any juror who held the opinion, about which Mr. Wood sought to inquire during *voir dire*, could be challenged for cause and if a single juror held the opinion that black on black racial discrimination was not possible, then Mr. Wood was automatically foreclosed from the possibility of recovery at the very outset. Thus, in the absence of this essential inquiry Mr. Wood was denied effective use of his for cause challenges, which are constitutionally protected. *Swain v. Alabama*, 380 U.S. 202, 219, 85 S. Ct. 824, 835 (1965).

While the facts in this instant case are equally compelling, this Court has yet to speak definitively in extending to the civil litigant the specific principle established in *Morgan* — that it violates due process to foreclose a litigant from a statutory option otherwise available to him, by refusing a relevant voir dire inquiry. However, while the principle in *Morgan, Id.*, was established in the context of the criminal defendant, this Court has consistently affirmed that the basic rules of fairness, due process, voir dire and the disqualifying state of mind of jurors established in the criminal context, extend also to the civil litigant. *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991).

It has been long established that, even where the case does not turn on race, a black party has an established federal right to make relevant inquiries with respect to racial attitudes under the due process clause to the Fourteenth Amendment as part of ensuring the "essential demands of fairness." *Ham v. South Carolina*, 409 U.S. 524, 526 (1972); *Aldridge v. United States*, 283 U.S. 308 (1931). *See also Turner v. Louisiana*, 379 U.S. 466 (1965)(where this court held that the 14th Amendment independently requires impartiality of any jury empaneled to try a cause). *Also Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991).

Moreover, this Court has established that the inquiry into whether a prospective juror has a disqualifying state of mind extends beyond questions of personal racial bias to any opinions or firmly held perceptions which could have a prejudicial impact on the litigant's ability to prevail in his case. *Aldridge, Id.*, at 313.

The trial judge's general questions regarding personal bias did not address the specific concern raised by Mr. Wood's inquiry; an inquiry directly relevant to an essential element of

Mr. Wood's claim. Fundamental fairness demands a greater right to specific inquiry where, as here, the inquiry is directly relevant to an essential element of the litigant's cause of action. *See United States v. Napoleone,* 349 F.2d 350 (3d Cir. 1965).

This petition should be granted so that this Honorable Court may confirm for the first time that the specific precept and principle established in *Morgan, Id.*, regarding the due process violation of effectively foreclosing a litigant's statutory options by refusing relevant and important voir dire inquiries, extends to the civil litigant.

II.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH APPLICABLE PRIOR RULINGS OF THIS COURT ON THE ESSENTIAL DUE PROCESS RIGHT OF A LITIGANT TO A TRIAL BEFORE A FAIR AND IMPARTIAL TRIER OF FACT.

The unfairness in the case below was compounded by the form of the trial judge's special interrogatories and by his supplemental instruction in response to the jury's request for permission to deliberate on the elements independent of the sequence set forth in the special interrogatories.

Had there been any chance that a thorough review of the evidence in the context of all the elements of Mr. Wood's 42 U.S.C. § 1981 discrimination claim could overcome a preset opinion about black on black racial discrimination, it was foreclosed by the form of the trial judge's special interrogatories and supplemental instructions to the panel.

When the jury was induced to abandon its interest in deliberating the case beyond the threshold question of racial discrimination, the natural deliberation process of the jury was

impeded and the opportunity for the jurors to reconsider the accuracy of their preset opinions on the basis of a thorough examination of the evidence was also prematurely aborted.

The totality of these circumstances violated Mr. Wood's due process right to a fair trial before an impartial trier of fact. For this reason as well, Mr. Wood's petition should be granted to reaffirm the longstanding precept of this court that fundamental due process demands essential fairness during the trial and impartiality of the trier of fact.

III.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW EFFECTIVELY NULLIFIES THE LEGAL PROTECTIONS ACCORDED PETITIONER AND OTHER SIMILAR LITIGANTS UNDER 42 U.S.C. § 1981, WHERE THE OPPOSING PARTIES SHARE THE SAME RACE OR GENDER.

The trial judge in this case acknowledged that there was no statutory bar to Mr. Wood's race discrimination claim against the black defendants, Councilman Street and Ms. Bruce. However, as a practical matter, the totality of the trial judge's refusal of Mr. Wood's requested voir dire question, the form of the special interrogatories, the trial judge's supplemental instructions and the use of the common opinion as a defense during trial, nullified Mr. Wood's statutory right to recovery under 42 U.S.C. § 1981. If left undisturbed, the opinion below would have the same nullifying effect on other litigants in cases where the parties share the same race and/or gender.

Mr. Wood's petition for certiorari should be granted to confirm that Mr. Wood and similarly situated litigants have a

statutory right to recovery under 42 U.S.C. § 1981 against persons of the same race and/or gender, and that this statutory right can not be nullified or foreclosed defacto by the manner of voir dire, special jury interrogatories, jury instructions or otherwise.

CONCLUSION

This case presents a federal question of exceptional importance — whether it violates due process and basic fairness for the trial judge to refuse a *voir dire* question regarding a commonly held belief relevant to an essential element of the case that would reveal a disqualifying state of mind, and where the belief is invoked as a defense throughout pretrial and trial proceedings and if held by a single juror would preclude the possibility of recovery by the litigant.

If the Court of Appeals' opinion on this matter is allowed to stand then Mr. Wood will have been denied fundamental due process in his right to a fair trial before a fair and impartial trier of fact. Mr. Wood's ability to enforce his statutory entitlements and protections under 42 U.S.C. § 1981 will also have been defacto nullified.

Moreover, the ability of other litigants to enforce the protections of 42 U.S.C. § 1981 under comparable circumstances involving discrimination and harassment claims between parties of the same race and/or the same gender will likewise be compromised and nullified. Such cases have been presented to the federal court more frequently during the past several years. Consequently, the Court of Appeals' opinion has a broader impact than simply Mr. Wood and this instant case. By granting Mr. Wood's petition for certiorari, however, this Honorable Court can correct the Court of Appeals' decision which defies this Court's longstanding holdings that a litigant

has a constitutional due process right to a fair trial before an impartial jury and that the broad discretion of the trial judge during voir dire is restricted by the essential requirements of due process and basic fairness.

In so doing this Court can confirm in the context of a civil case that a litigants' due process rights are violated when the absence of voir dire inquiry on an issue essential to his claim forecloses the litigant from the possibility of recovery and nullifies a statutory option available to the litigant.

The Court can also affirm that the precept established in *Morgan, Id.*, regarding the due process limitations and requirements for basic fairness restricting the trial judge's otherwise broad discretion during the voir due inquiry, extend also to the civil litigant. It can thus be specifically reconfirmed by this Court that the civil litigant, whose losses may include property and the pursuit of his livelihood, shares the criminal defendant's basic entitlement to a fair trial before an impartial fact finder. *See Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991).

Accordingly, petitioner, Mr. Wood respectfully requests that his petition for writ of certiorari be granted.

Respectfully submitted,

ROSALIND M. PLUMMER, ESQ.
Counsel of Record
500 East Washington Lane
Philadelphia, PA 19144-1011
(215) 438-3178

Attorney for Petitioner

APPENDIX

APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, DATED MAY 6, 1998

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-1270

RAYMOND WOOD,

Appellant

v.

EDWARD G. RENDELL, etc., et al.,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Before: STAPLETON, NYGAARD and WEIS, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by this Court on April 21, 1998.

On consideration whereof, it is now ordered and adjudged by this Court that the judgments of the District Court entered March 16, 1995, November 3, 1995, and March 5, 1997 be and the same are hereby affirmed.

Appendix A

Costs taxed against appellant.

ATTEST:

s/ P. Douglas Sisk
P. Douglas Sisk
Clerk

Date: MAY 08 1998

Certified as a true copy and issued in lieu of a formal mandate on June 17, 1998

Teste: s/ P. Douglas Sisk

Clerk, United States Court of Appeals for the Third Circuit

APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED MAY 6, 1998

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-1270

RAYMOND WOOD,

Appellant

v.

EDWARD G. RENDELL, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF PHILADELPHIA; CITY OF PHILADELPHIA; JOHN F. STREET, PERSONALLY AND IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE CITY COUNCIL OF THE CITY OF PHILADELPHIA; AUGUSTA CLARKE, IN HER OFFICIAL CAPACITY AS CHAIRPERSON OF COUNCIL'S COMMITTEE ON PUBLIC PROPERTY AND PUBLIC WORKS; BARBARA KAPLAN, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE PLANNING COMMISSION OF THE CITY OF PHILADELPHIA; ZONING BOARD OF ADJUSTMENTS OF THE CITY OF PHILADELPHIA; STEVEN KAUFFMAN, PERSONALLY AND AS CHIEF EXECUTIVE OFFICER OF COMMUNITY VENTURES, INC.; COMMUNITY VENTURES INC; UNA VEE BRUCE, PERSONALLY AND IN HER OFFICIAL CAPACITY AS PRESIDENT OF FRANCISVILLE COMMUNITY DEVELOPMENT CORPORATION AND CONCERNED RESIDENTS OF FRANCISVILLE; JOHN F. KROMER, PERSONALLY AND

Appendix B

IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE PHILADELPHIA OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT; HENRY G. CISNEROS, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOUSING & URBAN DEVELOPMENT; U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. Civ. No. 94-cv-01489)
District Judge: Honorable John R. Padova

Argued April 21, 1998
Before: STAPLETON, NYGAARD and WEIS,
Circuit Judges
Filed MAY 08 1998

MEMORANDUM OPINION OF THE COURT

WEIS, *Circuit Judge.*

Plaintiff Raymond Wood brought this suit under 42 U.S.C. §§ 1981, 1983, and 2000(d) against various municipal and private defendants alleging discriminatory actions against him in connection with a real estate project he planned to develop in the Francisville section of Philadelphia. The district court granted summary judgments to all defendants except John F. Street and Una Vee Bruce. The case against those two individuals proceeded to a jury trial and resulted in verdicts in their favor.

In this appeal, Wood asserts that the trial judge erred in

failing to submit a specific question on racial bias to the prospective jurors on voir dire. We find no abuse of discretion in the circumstances here where the general issue of racial bias was brought to the attention of the jury panel.

Wood also contends, though somewhat indirectly, that the trial judge erred in answering a question from the jurors about the necessity of a unanuinous answer to an interrogatory submitted to them. We are persuaded that the Judge's answer was correct.

Wood further maintains that the district court should not have granted summary judgments in favor of various defendants despite his claims of racial discrimiriation, denial of due process and equal protection. We have reviewed the record and the opinions of the district court and conclude that entry of the judgments was not erroneous.

Wood did not present the requisite evidence to forestall summary judgments. For example, we note that a City policy prohibited transfer of property to a person who was in arrears on his property taxes. Wood was informed of potential outstanding tax liabilities at a public meeting of the Vacant Property Review Committee on April 6, 1993. At oral argument, Wood's counsel informed us that Wood disputed any liability at that meeting. We have reviewed the transcript of that meeting and note that Wood did testify about his plans but did not address the tax issue. The Chairman announced that Wood would be given a "chance to go straighten yourself out with the Revenue Department and then we are going to bring this back for consideration." At the meeting on May 4, 1993, the City Revenue Department representative stated that "applicant number two [Wood] is not in compliance." Wood's failure to

provide any documentation to resolve the problem left the Committee with little choice but to convey the property to another applicant. Thus, it was his own default and not discrimination, that prevented Wood from purchasing the vacant lot at 1716-1722 Poplar Street.

We also reject Wood's argument that defendants violated his constitutional rights by somehow freezing him out of the planning process. Reply Brief at 12. Defendants gave Wood adequate opportunity to present his views. Although he may not have had a hand in drafting the Francisville plan, Wood on several occasions informed various public officials of his development goals after the plan had been drafted, and nothing in the record suggests that development interests omitted from the plan would not be considered. Moreover, Wood failed to present any evidence of a legally cognizable interest that would support a finding of a constitutional violation.

Although Wood has raised a plethora of vague and conclusory allegations, we need not discuss all of them because they were adequately addressed by the district court in its carefully written opinions. Essentially for the reasons stated therein, we will affirm the judgments.

TO THE CLERK:

Please file the foregoing Opinion.

s/ Weis
United States Circuit Judge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, DATED FEBRUARY 26, 1997 AND ENTERED MARCH 5, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 94-1489

RAYMOND WOOD

v.

EDWARD G. RENDELL, Mayor of the City of Philadelphia, *ET AL.*

ORDER

AND NOW, this 26th day of February, 1997, upon consideration of Plaintiff's "Combined Motion to Reconvene [the] Jury Panel and for [a] Mistrial, [and] Rule 59 Motion for [a] New Trial and to Set Aside the Civil Judgment Filed and Entered on June 20, 1996" (Doc. Nos. 147, 172, 173, 174, 175), Defendants' memoranda in opposition (Doc. Nos. 148, 150, 181), Plaintiff's Reply (Doc. No. 182), and an oral argument held on August 5, 1996 (Doc. Nos. 153, 183), IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion is **DENIED.**

BY THE COURT:
s/ John R. Padova
John R. Padova, J.

APPENDIX D — MEMORANDUM OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED MARCH 5, 1997

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 94-1489

RAYMOND WOOD

v.

EDWARD G. RENDELL, Mayor of the City of Philadelphia, *ET AL.*

MEMORANDUM

Padova, J. February 26, 1997

Plaintiff, Raymond Wood, filed a civil rights action against the City of Philadelphia ("City"), Mayor Edward G. Rendell, and numerous City officials and private sector persons ("Defendants") regarding a development project that Wood spearheaded known as the International Farmers Market Project (the "IFM Project").[1] In February 1992, Wood requested that

1. Wood stied City officials — John F. Street, Augusta Clarke, Barbara Kaplan, John F. Kromer — and members of the private sector: Stephen F. Kaufman of Community Ventures, Inc., Una Vee Bruce, and the Francisville Community Development Corporation. After Defendants' Motion for Summary Judgment, the case proceeded against Defendant Street, the City, Defendant Bruce, and the Francisville Community Development Corporation. (*See* Doc. No. 89).

Defendants provide him with economic development financing and other support. According to Wood, Defendants refused to provide assistance based upon *inter alia* racial discrimination, in violation of 42 U.S.C.A. §§ 1981, 1983, and 2000d (West 1994).

Between June 3, 1996 and June 19, 1996, a trial was held, and the jury found in favor of Defendants on all counts. Currently before the Court is Wood's "Combined Motion to Reconvene [the] Jury Panel. and for [a] Mistrial, [and] Rule 59 Motion for [a] New Trial and to Set, Aside the Civil Judgment Filed and Entered on June 20, 1996." For the following reasons, the Court will deny Wood's Motion.

I. Standard of Review

Rule 59 of the Federal Rules of Civil Procedure provides for a new trial "to all or any of the parties and on all or part. of the issues (1) in an action in which there has been a trial by jury for any reasons for which new trials have heretofore been granted." Fed. R. Civ. P. 59(a). The Court's inquiry in evaluating a motion for a new trial that alleges trial error involves two questions: "[1] the Court must first determine whether an error was made in the course of the trial; [2] then, it must determine 'whether that error was so prejudicial that refusal to grant a new trial would be inconsistent with substantial justice.' " *Lampley v. Webb*, No. 94-260, 1996 WL 524330, at *5 (E.D. Pa. Sept. 12, 1996) (citing *Bhaya v. Westinghouse Elec. Corp.*, 709 F. Supp. 600, 601 (E.D. Pa. 1989), *aff'd*, 922 F.2d 184 (3d Cir. 1990) , *cert. denied*, 111 S. Ct. 2827, 501 U.S. 1217 (1991)). *See e.g., Sheridan v. E. I. DuPont de Nemours and Co.*, 100 F.3d 1061, 1076 (3d Cir. 1996) (delineating the standard for granting a new trial based

on an attack alleging that the evidence is legally insufficient to support a verdict).

"Even where there is 'substantial evidence' the trial judge may set aside a verdict for the reason that it is against the clear weight of the evidence, or that damages are excessive, or that substantial errors occurred in the admission or rejection of evidence." *Id.* (citing *Keystone Floor Prods. Co. v. Beattie Mfg. Co.*, 432 F. Supp. 869, 877 (E.D. Pa. 1977)). "The Court has broad discretion in deciding a motion for a new trial where the proffered ground is an error on a ruling that initially was within the trial court's discretion." *Id.* (citing *Klein v. Hollings*, 992 F.2d 1285, 1289-90 (3d Cir. 1993)).

II. Discussion

A. The Court's Response to Questions From the Jury

According to Wood, "[t]he Court committed a prejudicial error in giving the jury panel a responsive instruction which interfered with the natural deliberation process of the jury." (Pl.'s Mem. Supp. Mot. at 6 (Doc. No. 172) ("Pl.'s Mem.")). Shortly into their deliberations, the jury had a question concerning the verdict form. The verdict form contained two questions regarding each Defendant. For example, with regard to Defendant Street, the verdict form read:

> 1. Did Defendant John F. Street intentionally discriminate against Plaintiff Raymond Wood because of Plaintiff's race?
>
> Yes __ No __

Appendix D

> If you answered **Yes** to question 1, go on to question 2. if you answered **No** to question 1, enter a verdict in favor of Defendants John F. Street and the City of Philadelphia, and against Plaintiff.
>
> 2. Was Defendant John F. Street's discrimination against the Plaintiff a determinative factor in Plaintiff's inability to make and enforce contracts, or in Plaintiff's failure to enjoy all of the benefits, privileges, terms, and conditions of contractual relationships, or in the deprivation of Plaintiff's right to the full and equal benefit of the law?
>
> Yes __ No __
>
> If you answered **Yes** to both questions 1 and 2, enter a verdict in favor of the Plaintiff and against Defendants John F. Street and the City of Philadelphia. If you answered **No** to either question 1 or 2, enter a verdict in favor of Defendants John F. Street and the City of Philadelphia, and against the Plaintiff Raymond Wood.

(Doc. No. 146). During its deliberations, the jury submitted two questions to the Court: "[1] [m]ust we be unanimous on question 1 before proceeding to number 2? . . . . [2] [c]an we be divided on number 1 and go on to number 2?" (Tr., Civil Jury Trial, 6/19/96, at 3) ("Tr.")).

Wood requested that the Court inform the jury "that (the Court is) not going to direct them in any form or fashion so they will be free to deliberate in any form or fashion." (*Id.*) Wood feared "they suspect that they have to go in a sequential

order. And, I don't know that that's really the way a jury is confined." (*Id.* at 4). The Court answered the jury's question as follows:

> You must be unanimous in the determinations that you've been called upon to make by this jury verdict form.
>
> * * *
>
> Beyond the jury verdict form which you've been given, I am not going to direct any particular format or process for your deliberations. I think your format and your process of deliberations must be your own style.
>
> * * *
>
> Your answers have to be unanimous, but your method and your deliberative process I'm going to respectfully. I'm not going to intrude upon that in any way, shape or form. You do what you believe should be done with respect to that format and that order. The jury verdict form is self-explanatory and you must be unanimous.
>
> Now that's about as much as I think that I should say without — I don't want to run any risk of imposing on you your responsibility. My responsibility is Judge of the law. I mean, I've had many of the same format determinations to make for myself. Of course, I only had to worry about myself. There are eight of you functioning here.

> And, that just goes along with the deliberative process.
>
> Consider what it is you have to address, make up your mind what the logical — or what logic requires you to do in order to perform your function and go forward on that basis[;] except questions that have to be answered have to be answered unanimously.

(*Id.* at 5-6).

Wood maintains that the Court's response forced the jury panel "to accept and substitute the trial judge's 'logical' reasoning process . . . rather than emphasize and clarify to them their right to use a natural, common sense and comprehensive deliberation, process." (Pl.'s Mem. at 7). The Court, argues Wood, constrained the jury's ability to freely consider the elements of a § 1981 claim.

The Court unequivocally rejects Wood's contentions. When responding to the jury's questions, the Court honored the spirit and purpose of Wood's request by instructing the jury that (1) its deliberations were to be conducted in "its own style;" (2) the Court would afford complete deference to the jury's method and deliberative process; (3) the Court would not intrude into the deliberations; (4) the jury controlled both the format and the order of the deliberations; and (5) the Court would not impose in any way on the jury's responsibility. These remarks strongly emphasized the jury's freedom from Court interference and absolute discretion in the deliberative process. Furthermore, the Court enjoys latitude when instructing the jury, and Wood is not entitled to any specific manner or words of his own preference. *See Douglas v. Owens*, 50 F.3d 1226, 1233 (3d Cir.

1995) (stating "trial court has broad discretion to compose jury instructions . . . . [n]o litigant has a right to a jury instruction of its choice, or precisely in the manner and words of its own preference") (citations omitted).

Moreover, the Court did not err in continually reminding the jury that they had to reach a unanimous verdict. As a matter of long-standing policy, federal juries must reach unanimous verdicts. *See Olsen v. United States,* 521 F. Supp. 59, 70 (E.D. Pa. 1981) (remarking on the "federal policy of favoring unanimous verdicts in civil jury trials") (citation omitted), *aff'd,* 688 F.2d 823 (3d Cir. 1982), *cert. denied,* 459 U.S. 1107, 103 S. Ct. 732 (1983); *Masino v. Outboard Marine Corp.,* 88 F.R.D. 251, 252 (E.D. Pa. 1980) (stating "[s]ince the creation of the federal judicial system, federal courts have always required that a jury verdict be unanimous") (citations omitted), *aff'd,* 652 F.2d 330 (3d Cir.), *cert. denied,* 454 U.S. 1055, 102 S. Ct. 601 (1981).

Finally, Wood maintains that the format of the verdict form was too confining in that a failure to answer "yes" to the first question — did Defendant intentionally discriminate against Wood? — precluded the jury from entertaining the other questions. The jury's inability to find intentional discrimination, however, ends a § 1981 case. Before awarding relief under § 1981, a jury must find intentional discrimination. *See Chauhan v. M. Alfieri Co, Inc.,* 897 F.2d 123, 126 (3d Cir. 1990) (stating "[a] successful section 1981 claim requires proof of intentional discrimination") (citations omitted). *See also Melendez v. Illinois Bell Tel. Co.,* 79 F.3d 661, 669-70 (7th Cir. 1996) (remarking that to prevail under § 1981 "a plaintiff ultimately must prove that he has been the victim of intentional discrimination") (citation omitted).

Appendix D

B. Voir Dire Questions

Wood protests the Court's unwillingness to ask the panel of prospective jurors, during voir dire, "whether they believed that a black person could not discriminate against another black person on the basis of race." (Pl.'s Mem. at 14). Wood submitted the inquiry among his proposed voir dire questions. Wood's argument fails.

Concededly, the Court did not ask the panel. of potential jurors the exact question posed by wood. Nonetheless, the Court's questions covered the same subject matter and were designed to eliminate those prospective jurors tainted with the prejudices that Wood feared, thereby obviating the need for Wood's inquiry. Specifically, after the Court described the general nature of this lawsuit, and the attorneys and parties introduced themselves, the Court asked the panel *inter alia* whether any jurors (1) "have an opinion presently now or have . . . reached a conclusion about this case?" (2) "[or their relatives] have ever been denied credit on the basis of what [they] believed to be unfair or unlawful discrimination?" (3) "ever accused anyone or complained about anyone or to anyone of discriminat[ion] . . . for any reason?" (4) "have ever been discriminated against as a result of racial considerations?" and (5) "are aware of any reason whatsoever why [they] may not be able to be objective in a case brought by a black man against his city government and city official?" The Court also asked, "is there anything else about which I may not have inquired that you feel might prevent you from rendering a fair and impartial verdict based only upon the evidence that you hear in this case as well as my instructions to you on what the law is?" (Tr., 6/3/96, at 4, 7, 22, 23-24, 27).

Appendix D

Wood, an African-American, was introduced to the panel of potential jurors prior to voir dire. Defendant Street, also African-American, is a well known public figure. The panel of potential jurors was fully cognizant of both the parties and the basic issues in this lawsuit, and the Court's questions screened out and elicited the same biases and prejudices wood's inquiry would have found. Furthermore, the Federal Rules of Civil Procedure provide the Court with wide latitude in conducting voir dire. *See James v. Continental Ins. Co.*, 424 F.2d 1064, 1065 (3d Cir. 1970) (stating "Rule 47 (a) , F. R. Civ. P. ['Selection of Jurors'] confers upon the trial judge broad discretion as to the manner in which voir dire is conducted and the type and scope of the questions to be asked") (citation omitted).

C. The Court's Interpretation of § 1981

Wood maintains that the Court erred by providing the jury with a limited and restrictive interpretation of the activities actionable under § 1981. Specifically, the Court, argues Wood, limited its discussion of Wood's case to interference with contract when in actuality Wood's case "also had always been based upon the deprivation of [the] equal benefits and privileges clause of Section 1981." (Pl.'s Mem. at 18) . According to Wood, "the court's description of Section 1981 unnecessarily and incorrectly confined plaintiff's case to interference with contract." (*Id.*). Wood maintains the Court's instruction "eliminated from proper jury consideration (or certainly created confusion about) an entire body of evidence related to the denial of equal benefits and privileges." (*Id.* at 19).

Section 1981 protects the rights of persons "to make and enforce contracts, to sue, be parties, give evidence, and to the

full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." 42 U.S.C.A. § 1981 (a). "To make and enforce contracts" includes "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C.A. § 1981(b).

The Court adequately interpreted § 1981 and provided the jury with an expansive description of the discrimination against which it aims to protect. In its preliminary remarks, the Court explained the general theory of Wood's case, noting:

> [a]nd when I say interfered with his right to make and enforce contracts, I'm also talking about making and performing and modifying and terminating contracts and the enjoyment of all benefits, privileges, terms, conditions, of the contractual relationship .... Section 1981 guarantees each person, regardless of race or citizenship, freedom from discrimination in the making and enforcing of contracts.
>
> * * *
>
> The opportunity to contract or enter into agreements is denied in violation of Section 1981 when, on the basis of race, a defendant refuses to contract at all or when, on the basis of race, the terms of those contracts or prospective contracts are varied, so that the critical component here is was there racial discrimination or racial animus and did these rights that Section 1981 of this federal law as

it was designed to protect — were any of these rights violated as a result of that racial discrimination?

(Tr., 6/3/96, at 24-26).

In addition to addressing, in its preliminary remarks, the full scope of the provisions of § 1981, at the close of the case, the Court provided the jury with an extensive and comprehensive charge delineating the requisite elements for establishing a § 1981 claim. Specifically, the Court remarked on the differences between individual capacity and official capacity lawsuits; the actual language contained in § 1981; interpretations of § 1981 by the United States Supreme Court and the United States Court of Appeals for the Third Circuit; and the purpose of § 1981. The Court also provided a full explanation of all the elements of a § 1981 claim and thoroughly described the types of discrimination § 1981 aims to protect.

In describing Wood's claim, the Court noted that Wood "has sought to prove that the defendants interfered with his right to make and enforce contracts, his opportunity to obtain benefits, and deprived him of the full and equal benefits of the law." The Court also defined Defendants' denial of the "opportunity to contract" as the refusal to contract "at all. Or when, on the basis of race, a defendant varies the terms, makes the playing field unequal with respect to contractual. opportunities for development. If, because of his race, the plaintiff is denied these opportunities and benefits and contractual rights and pursuit, [then Wood makes out a § 1981 claim]". (Tr., 6/18/96, at 154-72). Thereafter, the Court interpreted the verdict form and instructed the jurors on how to use the form. (*Id.* at 172-74).

Finally, Wood objects to the Court's "exclusion of the City as a defendant for the policies and actions of its employees, independent of the activities of defendant Street." (Pl.'s Mem. at 20). The City cannot, however, be held liable on a theory of *respondeat superior. See Johnakin v. City of Philadelphia,* No. 95-1588, 1996 WL 18821, at *4 (E.D. Pa. Jan. 18, 1996) (concluding that "the rules of municipal liability pronounced by the Supreme Court in *Monell* continue to apply to § 1981 actions") ; *Gallardo v. Board of County Comm'rs, Kearny County, Kansas,* 857 F. Supp. 783, 786 (D. Kan. 1994) (noting that "[n]ot unlike § 1983, a municipality is not liable under § 1981 on a simple theory of respondeat superior") (applying *Jett v. Dallas Independent School Dist.,* 491 U.S. 701, 735-36, 109 S. Ct. 2702, 2723 (1989)). Accordingly, the Court properly excluded this theory of municipal liability.

D. Agent Liability

Wood claims that the Court erred "in refusing [Wood's] clarifying [jury] instruction on defendant Street's liability for the actions of others acting at his behest or on his behalf, to offset the otherwise limiting and misleading inferences in the jury verdict form." (Pl.'s Mem. at 21). This Court instructed the parties, prior to trial, to submit proposed jury instructions. After the applicable deadline, Wood submitted his proposed jury instructions which did not contain the agency instruction that Wood now requests. (*See* Doc. No. 134). Wood had an additional opportunity, during a jury charge conference held prior to the charge's delivery, to ask for the agency addition but did not avail himself of this opportunity. (*See* Tr., 6/18/96, at 74-79). Wood did not ask the Court for this instruction until *after* the jury had been charged, (*id.* at 175-76), at which time the Court denied the request as untimely. Furthermore, the Court

made it a point to allow Wood to present evidence of actions taken by City employees at the direction of Defendant Street:

> [The Court:] those actions, if there's a nexus with John Street, may very well be probative and relevant on Mr. Street's alleged discriminatory animus and therefore become relevant with respect to the suit against the [C]ity itself. And again, I mean again we don't have it within the context of a specific proffer, but that certainly would be the standard that we would employ .... [T]here may be relevant information with respect to John Street's animus arising out of circumstances involving other people. John Street doesn't operate in a vacuum.

(Tr., 6/3/96, at 11-12).

E. Striking Potential Jurors

In addition to a claim that Wood was not given a sufficient number of preemptory challenges, Wood maintains the Court erred in not dismissing certain jurors for cause. Specifically, Wood objects to the failure to remove juror number 143. ("No. 141"), whose husband formerly worked for Edward Rendell, Mayor of the City of Philadelphia; juror number 224 ("No. 224"), whose "best friend with whom he regularly communicated ... was personal security guard to Mayor Rendell;" and juror number 252 ("No. 252"), whose native language was not English.

An examination of the voir dire proceedings reveals, however, that Wood neither objected to the number of preemptory challenges nor requested the dismissal of these

jurors and thereby waived his ability to protest. (Tr., 6/3/96, 41-44, 48-50). *See United States v. Musquiz,* 45 F.3d 927, 931 (5th Cir.) (finding defendant waived objection to a juror by withdrawing his challenge for cause), *cert. denied,* 116 S. Ct. 54 (1995) ; *Marks v. Shell Oil Co.,* 895 F.2d 1128, 1129 (6th Cir. 1990) (finding "Marks waived this ground for challenging Kenney's fitness for jury service by failing to raise it at voir dire"). *But see Depree v. Thomas,* 946 F.2d 784, 792 n.13 (11th Cir. 1991) (stating, in a criminal case, that arguing that counsel waives a challenge for cause by his or her failure "to use an available preemptory strike to dismiss that juror is to contend that counsel must sacrifice one of the preemptory challenges rightly available to him or her in order to strike a juror who could be properly challenged for cause. There is no support for requiring such a tradeoff") (citation omitted).

"Because the trial judge is in the best position to assess the credibility and demeanor of the prospective jurors, district courts have been awarded ample discretion in determining how best to conduct voir dire." *Kirk v. Raymark Indus., Inc.*, 61 F. 3d 3.47, 153 (3d Cir. 1995) (citation omitted), *cert. denied*, 116 S. Ct. 1015 (1996). "In determining whether a particular juror should be excused for cause, our main concern is 'whether the juror holds a particular belief or opinion that will prevent or substantially impair the performance of his duties as a juror in accordance with the instructions and his oath.' " *Id.* (citation omitted). The Court encountered no indication that these jurors could not "lay aside any previously formed 'impression or opinion as to the merits of the case' . . . and 'render a verdict based on the wvidence presented to the court,' " *id.* (citation omitted), and therefore found no reason to dismiss them for cause. Furthermore, the Court did not believe that No. 252's grasp of the English language impaired her ability to function as a juror.

Appendix D

F. Exclusion and Admission of Evidence

Wood claims the Court erred in excluding evidence he sought to introduce at trial and in admitting certain exhibits proffered by Defendants. The Court addresses each item *seriatim*.

1. Testimonial Objections

Wood maintains that the Court should have allowed him to testify regarding "his interaction with defendant at a second meeting where defendant Street made statements revealing that his motivations in not supporting plaintiff were influenced by improper racial considerations." (Pl.'s Mem. at 26). To the contrary, the Court did allow Wood to testify concerning that meeting. (Tr., 6/11/96, at 24). Wood protests the Court's exclusion of evidence "probative to show the information about plaintiff's development needs which was available to defendants at the time of their actions to demonstrate the information the defendants were relying and acting upon." (Pl.'s Mem. at 26-27 (citing Tr., 6/10/96, at 155, 165)). In both instances, however, Wood tried to testify to what other people said, in stark violation of the hearsay rules.

According to Wood, the Court should have allowed Wood "to impeach the testimony of defendant Bruce on examination of a hostile witness, after she had been dishonest or stated an apparent lie on the stand about her interest in protecting the welfare of existing homeless residents in that community." (Pl.'s Mem. at 27). The Court granted Defendants' objection to this line of questioning, however, because it exceeded the scope of Defendants, questioning of Defendant Bruce. (Tr., 6/6/96, at 46).

Appendix D

2. Exhibit Objections

Wood claims the Court wrongfully refused the admission of Plaintiff's Exhibit Number 98, a deposition transcript of Defendant Bruce relied on by Wood to impeach the witness. Because Bruce had already read the transcript to the jury, however, the Court properly denied its admission into evidence. (Tr., 6/11/96, at 168) . Wood protests the Court's unwillingness to admit Plaintiff's Exhibit Number 114, a letter written by Wood codifying discussions that supposedly occurred between Wood and Defendant Street. The Court plainly articulated its reasons for excluding this evidence:

> there is testimony that the letter was sent. The first two paragraphs of the letter, which gives the general subject matter of the letter[, was] read to the jury. The remaining portion of that letter, in my legal judgment, is not admissible evidence. And, therefore the jury should not take it into consideration.

(Tr., 6/18/96, at 48). (*See* Tr., 6/17/96, at 16-18, 213-218; Tr., 6/18/96, at 19, 46-48). A re-examination of Plaintiff's Exhibit Number 114 fails to convince the Court to alter its initial conclusion. In addition to articulating Wood's credentials and the IFM Project's benefits, the letter delineates Wood's feelings regarding Defendant Street's alleged wrongful behavior and in that respect is self-serving, i.e., the letter makes unsubstantiated accusations that could have easily confused the jury.

Wood maintains that Plaintiff's Exhibit Number 68, a letter from Wood to the Philadelphia Industrial Development Corporation, should have been admitted into evidence. The Court disagrees. The document was "highly questionable as

rebuttal. But beyond that, P-68 contain(ed) characterizations and conclusions which are really within the jury's domain based on non-hearsay type of evidence. Any non-hearsay type of purpose that P-68 would serve has been amply covered by the testimony and can be amply covered by the testimony." (Tr., 6/18/96, at 16-17).

The Court also properly refused admission of Plaintiff's Exhibits Number 108, 45, and 51. Plaintiff's Exhibit 108, a report completed the by the Philadelphia Office of Housing and Community Development, titled "Future of Public Markets in Philadelphia," had to be excluded because it contained statistical analysis and opinion. (Tr., 6/10/96, at 20; Tr., 6/11/96, at 168-70). Wood offers no legitimate reason as to why the Court erred in refusing to admit Plaintiff's Exhibit Number 45, a letter to Councilwoman Augusta Clark and other members of the Philadelphia City Council, that depicts, in a self-serving fashion, Wood's alleged mistreatment. (*See* Tr., 6/7/96, at 64-68). Finally, Plaintiff's Exhibit Number 51, a letter from Wood to Defendant Street, raised authenticity concerns because it contained neither a letter-head nor a signature. (*Id.*, at 42-43).

Similarly, the Court did not commit any error in admitting Defendants' Exhibit Number 218 (a) and Number 218 (b) , the community newsletters. The documents were discussed at length, and Wood's only objection to their admission was that the witnesses discussing them did not directly participate in their preparation. This remains an insufficient basis upon which to exclude them. (*See* Tr., 6/5/96, at 195-200; Tr., 6/6/96, at 8-14; Tr., 6/18/96, at 51).

Appendix D

G. Remaining Grounds

The Court summarily rejects the remainder of Wood's contentions in support of his Motion. It finds neither validity in his arguments nor evidentiary support in his submissions to substantiate a claim that the Court acted impartially and with hostility toward Wood. Wood's unsuccessful, efforts against Defendants can be attributed *only* to jury determinations exonerating Defendants. An examination of the Court's rulings on objections, preliminary instructions to the jury, treatment afforded attorneys, jury charge, and verdict form supports a conclusion that the record is devoid of bias.[2]

An appropriate order follows.

---

2. Wood also moves to reconvene the jury panel, protesting that the jury, during its deliberations, improperly considered a newspaper article that was not part of the record. The Court already denied this Motion from the bench, however, following oral argument held on the Motion. (*See* Tr., Oral Argument, 8/5/96, at 18-19 (Doc. Nos. 153, 183)).

APPENDIX E — CIVIL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED JUNE 20, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 94-1489

RAYMOND WOOD

v.

JOHN F. STREET, THE CITY OF PHILADELPHIA, UNA VEE BRUCE AND THE FRANCISVILLE COMMUNITY DEVELOPMENT CORPORATION

CIVIL JUDGMENT

Before the Honorable John R. Padova

AND NOW, this 19th day of June, in accordance with the jury's verdict rendered in open court,

IT IS ORDERED that Judgment be and the same is hereby entered in favor of **defendants,** John F. Street, The City of Philadelphia, Una Vee Bruce and the Francisville Community Development Corporation and against **plaintiff,** Raymond Wood.

BY THE COURT

ATTEST: s/ Lisa McFarland
Lisa McFarland
Deputy Clerk

APPENDIX F — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT SUR PETITION FOR REHEARING, DATED JUNE 9, 1998

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-1270

RAYMOND WOOD
Appellant

v.

EDWARD G. RENDELL, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF PHILADELPHIA; CITY OF PHILADELPHIA; JOHN F. STREET, PERSONALLY AND IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE CITY COUNCIL OF THE CITY OF PHILADELPHIA; AUGUSTA CLARKE, IN HER OFFICIAL CAPACITY AS CHAIRPERSON OF COUNCIL'S COMMITTEE ON PUBLIC PROPERTY AND PUBLIC WORKS; BARBARA KAPLAN, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE PLANNING COMMISSION OF THE CITY OF PHILADELPHIA; ZONING BOARD OF ADJUSTMENTS OF THE CITY OF PHILADELPHIA; STEVEN KAUFFMAN, PERSONALLY AND AS CHIEF EXECUTIVE OFFICER OF COMMUNITY VENTURES, INC.; COMMUNITY VENTURES, INC.; UNA VEE BRUCE, PERSONALLY AND IN HER OFFICIAL CAPACITY AS PRESIDENT OF FRANCISVILLE COMMUNITY DEVELOPMENT CORPORATION AND CONCERNED RESIDENTS OF FRANCISVILLE; JOHN F. KROMER, PERSONALLY AND IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE

Appendix F

PHILADELPHIA OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT; HENRY G. CISNEROS, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOUSING & URBAN DEVELOPMENT; U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT

SUR PETITION FOR REHEARING

BEFORE: BECKER, *Chief Judge,* SLOVITER, STAPLETON,

GREENBERG, SCIRICA, COWEN, NYGAARD,

ALITO, ROTH, McKEE, and WEIS,* *Circuit Judges*

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in die decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

---

* Hon. Joseph F. Weis, Jr., Senior U.S. Circuit Judge for the Third Circuit, was a member of the original panel. His vote is limited to panel rehearing only.

Appendix F

By the Court,

s/ [illegible]
Circuit Judge

Dated: Jun 09 1998

APPENDIX G — PLAINTIFF'S PROPOSED VOIR DIRE QUESTIONS TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION
NO. 94-CV-1489

RAYMOND WOOD,

Plaintiff

v.

EDWARD G. RENDELL. et al.

Defendants

PLAINTIFF'S PROPOSED VOIR DIRE QUESTIONS

Plaintiff, Raymond Wood, proposes the following voir dire questions. These questions are in addition to the standard voir dire questions, including the panels' relationship with the parties, witnesses and attorneys.

1. Do you, any of your friends or relatives, ever been employed by the City of Philadelphia. If so, when and in what capacity, if no longer employed, how was your employment terminated.

2. Have you, any of your friends or relatives, ever applied for employment with the City of Philadelphia. If so, when, with what department and what was the outcome.

Appendix G

3. Have you, any of your friends or relatives, ever had a contractual relationship with the City of Philadelphia, other than as an employee. If so, when, describe the nature of the contract and identify the department with whom you interacted and the signators to the contract.

4. Have you, any friends or relatives or employers, ever bid for a contract with the City of Philadelphia. If so, when, describe nature of bid and outcome.

5. To your knowledge, do you, your employer, friends or relatives contemplate submitting a bid to the City of Philadelphia any time in the near future. If so, when, describe area of interest.

6. Have you, your close friends, relatives or employers, ever interacted over an extended period with the City of Philadelphia in any capacity. If so, please describe nature of interaction and when it occurred.

7. Have you, your friends, relatives or employers, ever interacted over an extended period with any governmental branch or office, local or federal, whether in an employment, capacity or otherwise. If so, identify the branch or office of government and describe the nature of the interaction and when it occurred.

8. Do you believe that government and government officials should have the absolute, unrestricted, unchecked right to decide which citizens it provides services to and which citizens it disregards.

Appendix G

9. Have you or anyone you know ever been accused of any form of discrimination. If so, please describe circumstances, when it occurred and outcome.

a. Do you believe the accusations were unfair or unfounded.

b. Do you believe the experience makes it difficult for you to be objective about a case involving a black male and allegations of race and gender discrimination.

c. In your opinion did you suffer a loss as a result of the accusations.

10. Have you ever accused anyone of discriminating against you for any reason. If so, describe the reasons and circumstances and the time frame involved as well as the outcome.

11. Do you believe that you have ever been discriminated against as a result of race or gender considerations.

12. Do you believe that black people can not discriminate against other black people.

13. Do you believe that you cannot fight city hall.

14. Do you believe that a private citizen should not fight city hall even if they are being or believe that they are being treated unfairly by their local government.

15. Have you ever resided in a community which is undergoing a change in its racial make-up.

Appendix G

a. If so, describe the circumstances and identify the community in question.

b. What was your reaction to the experience, was it pleasant or unpleasant.

c. Did you approve of the changeover.

16. Have you ever resided in a community which you considered to be economically depressed.

17. Do you believe or feel that blacks are getting too much from government.

18. Are you aware of any reason, whatsoever, why you may not be able to be objective in a case by a black man against his city government and city officials.

19. Have you ever been involved with a non-profit community organization.

a. If so, did the organization receive government funding

b. Were you an officer of the organization.

c. Were you very actively involved with the organization.

d. Was you experience with the organization a positive one If not state why.

e. Did your organization have to struggle to make ends meet.

Appendix G

20. Are you aware of any reason, whatsoever, why you may not be able to be objective in a case by a black man against a member of a community organization.

SUBMITTED BY:

s/ Rosalind M. Plummer
ROSALIND M. PLUMMER, ESQUIRE
Attorney for Plaintiff
Raymond Wood
500 East Washington Lane
Philadelphia, PA 19144
(215) 438-3178

APPENDIX H — JURY VERDICT FORM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 94-1489

RAYMOND WOOD

V.

JOHN F. STREET, THE CITY OF PHILADELPHIA, UNA VEE: BRUCE and THE FRANCISVILLE COMMUNITY DEVELOPMENT CORPORATION

Jury Verdict Form

1. Did Defendant John F. Street intentionally discriminate against Plaintiff Raymond Wood because of Plaintiff's race?

   Yes ___ No ___

   If you answered **Yes** to question 1, go on to question 2. If you answered **No** to question 1, enter a verdict in favor of Defendants John F. Street and the City of Philadelphia, and against Plaintiff Raymond Wood — then continue *on* to question 4.

2. Did Defendant John F. Street prevent Plaintiff from making or enforcing contracts necessary to effectively

pursue his farmer's market project, or from enjoying all of the benefits, privileges, terms, and conditions of contractual relationships involving his project, or from obtaining the full and equal benefit of the law in relation to his project?

Yes ___ No ___

If you answered Yes to both questions 1 and 2, go on to question 3. If you answered No to either question 1 or 2, enter a verdict in favor of Defendants John F. Street and the City of Philadelphia, and against the Plaintiff Raymond Wood — then go on to question 4.

3. Was Defendant John F. Street's intentional racial discrimination against Plaintiff a determinative factor in the deprivation of Plaintiff's rights under Section 1981 as articulated in question 2?

If you answered Yes to questions 1 and 2 and 3, enter a verdict in favor of Plaintiff and against Defendants John F. Street and the City of Philadelphia. If you answered No to either question I or 2 or 3, enter a verdict in favor of Defendants John F. Street and the City of Philadelphia, and against Plaintiff Raymond Wood — then continue on to question 4.

Yes ___ No ___

VERDICT

____ In favor of Plaintiff Raymond Wood, and against Defendants John F. Street and the City of Philadelphia.

Appendix H

____ In favor of Defendants John F. Street and the City of Philadelphia, and against Plaintiff Raymond Wood.

Please go on to question 4.

4. Did Defendant Una Vee Bruce intentionally discriminate against Plaintiff Raymond Wood because of Plaintiff's race?

Yes ___ No ___

If you answered Yes to question 4, go on to question 5. If you answered No to question 4, enter a verdict in favor of Defendants Una Vee Bruce and the Francisville Community Development Corporation, and against the Plaintiff Raymond Wood.

5. Did Defendant Una Vee Bruce prevent Plaintiff from making or enforcing contracts necessary to effectively pursue his farmer's market project, or from enjoying all of the benefits, privileges, terms, and conditions of contractual relationships involving his project, or from obtaining the full and equal benefit of the law in relation to his project?

Yes ___ No ___

If you answered Yes to both questions 4 and 5, go on to question 6. If you answered No to either question 4 or 5, enter a verdict in favor of Defendants Una Vee Bruce and the Francisville Community Development Corporation, and against Plaintiff Raymond Wood.

Appendix H

6. Was Defendant Una Vee Bruce's intentional racial discrimination against Plaintiff a determinative factor in the deprivation of Plaintiff's rights under Section 1981 as articulated in question 5?

Yes ___ No ___

If you answered Yes to questions 4 and 5 and 6, enter a verdict in favor of Plaintiff, and against Defendants Una Vee Bruce and the Francisville Community Development Corporation. If you answered No to either question 4 or 5 or 6, enter a verdict in favor of Defendants Una Vee Bruce and the Francisville Community Development Corporation, and against Plaintiff Raymond Wood.

VERDICT

___ In favor of Plaintiff Raymond Wood, and against Defendants Una Vee Bruce and the Francisville Community Development Corporation.

___ In favor of Defendants Una Vee Bruce and the Francisville Community Development Corporation, and against Plaintiff Raymond Wood.

_____ _____

DATE FOREPERSON

Please inform Lisa McFarland when you have completed you deliberations